LAW AND PARLIAMENTARY AFFAIRS SECRETARIAT

Notification No. LAW 57 LCA 75.

Bangalore, dated 23rd August 1975.

Ordered that the Maintenance of Internal Security (Amendment) Act, 1975 (39 of 1975) published in Part II Section I of the *Gazette of India*, Ex-traordinary dated 5th August 1975 be republished in the *Karnataka Gazette* for general information.

By Order and in the name of the Governor of Karnataka,

B. NAGESHA RAO,

Under Secretary to Government,
18 *Dept. of Law and Parly. Affairs.*

[Assented to on 5th August 1975 Act No. 39 of 1975.]

THE MAINTENANCE OF INTERNAL SECURITY (AMENDMENT) ACT, 1975.

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ACT

further to amend the Maintenance of Internal Security Act, 1971.

BE it enacted by Parliament in the Twenty-sixth Year of the Republic of India as follows :—

1. *Short title and commencement.*—(1) This Act may be called the Maintenance of Internal Security (Amendment) Act, 1975.

(2) Section 7 shall be deemed to have come into force on the 25th day of June, 1975 and the remaining provisions of this Act shall be deemed to have come into force on the 29th day of June, 1975.

2. *Amendment of section* 4.—In section 4 of the Maintenance of Internal Security Act, 1971 (26 of 1971). (hereinafter referred to as the principal Act), for the words and figures "Code of Criminal Procedure, 1898 (5 of 1898)", the words and figures "Code of Criminal Procedure, 1973 (2 of 1974)" shall be substituted.

3. *Amendment of section* 7.—In section 7 of the principal Act,—

(*a*) in clause (*a*) of sub-section (*1*), for the words and figures "Presidency Magistrate or a Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides ; and thereupon the provisions of sections 87, 88 and 89 of the Code of Criminal Procedure, 1898 (5 of 1898)", the words, figures and brackets "Metropolitan Magistrate or a Judicial Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides; and thereupon the provisions of sections 82 to 86 (both inclusive) of the Code of Criminal Procedure, 1973 (2 of 1974.)" shall be substituted ;

(*b*) in sub-section (2), for the words and figures Code of Criminal Procedure, 1898 (5 of 1898)", the words and figures "Code of Criminal Procedure, 1973 (2 of 1974)" shall be substituted.

4. *Amendment of section 14.*—In section 14 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely :—

"(2) The revocation of a detention order shall not bar the making of another detention order under section 3 against the same person."

5. *Amendment of section 15.*—In section of 15 of the principal Act,—

(*a*) after sub-section (3), the following sub-section shall be inserted, namely :—

"(3A) If the appropriate Government has reason to believe that any person who has failed to surrender himself in the manner specified in sub-section (3) has absconded or is concealing himself, that Government may make a report in writing of the fact to a Metropolitan Magistrate or a Judicial Magistrate of the first class having jurisdiction in the place where ths said person ordinarily resides and thereupon the provisions of sections 82 to 86 (both inclusive) of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply in relation to such person as they apply in relation to a person who has absconded or is concealing himself so that a warrant issued by the Magistrate cannot be executed.";

(*b*) after sub-section (5), the following sub-section shall be inserted, namely :—

"(6) Notwithstanding anything contained in any other law and save as otherwise provided in this section, no person against whom a detention order made under this Act is in force shall be released whether on bail or bail bond or otherwise.".

6. *Insertion of new section 16A.*—After section 16 of the principal Act, the following section shall be inserted, namely :—

16A. *Special provisions for dealing with emergency.*—(1) Notwithstanding anything contained in this Act or any rules of natural justice, the provisions of this section shall have effect during the period of operation of the Proclamation of Emergency issued under clause (1) of article 352 of the Constitution on the 3rd day of December, 1971, or the Proclamation of Emergency issued under that clause on the 25th day of June, 1975, or a period of twelve

months from the 25th day of June, 1975, whichever period is the shortest.

(2) The case of every person (including a foreigner) against whom an order of detention was made under this Act on or after the 25th day of June, 1975, but before the commencement of this section, shall, unless such person is sooner released from detention, be reviewed within fifteen days from such commencement by the appropriate Government for the purpose of determining whether the detention of such person under this Act is necessary for dealing effectively with the emergency in respect of which the proclamations referred to in sub-section (1) have been issued (hereafter in this section referred to as the emergency) and if, on such review, the appropriate Government is satisfied that it is necessary to detain such person for effectively dealing with the emergency, the Government may make a declaration to that effect and communicate a copy of the declaration to the person concerned.

(3) When making an order of detention under the Act against any person (including a foreigner) after the commencement of this section, the Central Government or the State Government or, as the case may be, the officer making the order of detention shall consider whether the detention of such person under this Act is necessary for dealing effectively with the emergency and if, on such consideration, the Central Government or the State Government or, as the case may be, the officer is satisfied that it is necessary to detain such person for effectively dealing with the emergency, that Government or officer may make a declaration to that effect and communicate a copy of the declaration to the person concerned :

Provided that where such declaration is made by an officer, it shall be reviewed by the State Government to which such officer is subordinate within fifteen days from the date of making of the declaration and such declaration shall cease to have effect unless it is confirmed by the State Government: after such review, with the said period of fifteen days.

(4) The question whether detention of any person in respect of whom a declaration has been made under sub-section (2) or sub-section (3) continues to be necessary for effectively dealing with the emergency shall be reconsidered by the appropriate Government within four months from the date of such declaration and thereafter at intervals not exceeding four months and if, on such reconsideration, it appears to the appropriate Government that the detention of the person is no longer necessary for effectively dealing with the emergency, that Government may revoke the declaration.

(5) In making any review, consideration or reconsideration under sub-sections (2), (3) or (4), the appropriate Government or officer may, if such Government or officer considers it to be against public interest to do otherwise, act on the basis of the information and materials in its or his possession without disclosing the facts or giving an opportunity of making a representation to the person concerned.

(6) In the case of every person detained under a detention order to which the provisions of sub-section (2) apply, being a person the review of whose case is pending under that sub-section or in respect of whom a declaration has been made under that sub-section,—

(i) sections 8 to 12 shall not apply ; and

(ii) section 13 shall apply subject to the modification that the words and figures "which has been confirmed under section 12" shall be omitted.

(7) In the case of every person detained under a detention order to which the provisions of sub-section (3) apply, being a person in respect of whom a declaration has been made under that sub-section,—

(i) section 3 shall apply subject to the modification that for sub-sections (3) and (4) thereof, the following sub-section shall be substituted, namely :—

"(3) When any order of detention is made by a State Government or by an

officer subordinate to it, the State Government shall, within twenty days, forward to the Central Government a report in respect of the order.";

(ii) sections 8 to 12 shall not apply; and

(iii) section 13 shall apply subject to the modification that the words and figures "which has been confirmed under section 12" shall be omitted.

7. *Insertion of new section 18*.—Section 18 of the principal Act shall be re-numbered as section 19 thereof and before that section as so re-numbered, the following section shall be inserted, namely :—

"*18 Exclusion of common law or natural law rights, if any*.—No person (including a foreigner) detained under this Act shall have any right to personal liberty by virtue of natural law or common law, if any."

8 *Repeal and saving*.—(1) The Maintenance of Internal Security (Amendment) Ordinance, 1975 (4 of 1975) and the Maintenance of Internal Security (Second Amendment) Ordinance, 1975 (7 of 1975) are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act as amended by the said Ordinances shall be deemed to have been done or taken under the principal Act as amended by this Act.